

**MERCANTILE SELF-INSURANCE TRUST**

**BYLAWS**

**Effective** \_\_\_\_\_

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**MERCANTILE SELF-INSURANCE TRUST**  
**A Group Self-Insurance Trust**

**BYLAWS**

Effective \_\_\_\_\_

**ARTICLE I -- NAME; GOVERNING INSTRUMENTS**

**1.1 Name.** The name of the Trust is the **Mercantile Self-Insurance Trust**.

**1.2 Plan of Operation.** The administration of the Trust shall be governed by the provisions of the **Mercantile Self-Insurance Trust's** Declaration of Trust, the Participation Agreement, and, to the extent not inconsistent therewith, these Bylaws.

**ARTICLE II -- DEFINITIONS**

**2.1 Definitions.** For the purposes of these Bylaws and the provisions hereof, terms shall have the meaning defined in the **Mercantile Self-Insurance Trust's** Declaration of Trust.

**ARTICLE III -- PARTICIPANTS**

**3.1 Participants.** All parties to the Declaration of Trust and identified therein as Participants shall be Participants for the purposes of these Bylaws. Each Participant shall be entitled to one (1) vote on any matter submitted to a vote of the Participants.

**3.2 New Participants.** Additional Participants may be added to the Trust upon approval of their application therefor by the Trust and approval by the Chair. Such additional Participants shall agree to be bound by the provisions of the Declaration of Trust, the Participation Agreement and these Bylaws, and shall agree to be bound by all actions taken by the Trustees on their behalf.

**3.3 Qualifications for Participation.** To qualify for participation, an applicant must (i) be an employer within the meaning of the New York Workers' Compensation Law, doing business in the State of New York; (ii) engaged in the business retail sales of goods and having or qualifying for a Standard Industrial Classification (SIC) Code relating to such business activity as described in Appendix A hereto, employing persons who work in connection with those defined retail sales industries; (iii) meet the qualifications for participation as established by these Bylaws, the Declaration of Trust, and the Participation Agreement; (iv) meet the underwriting criteria for participation adopted by the Trust and any Insurer providing a contract of insurance for the Trust; and (v) satisfy the requirements for participation established by the Chair of the New York Workers' Compensation Board (hereinafter "the Chair"). Notwithstanding the provisions of

this Section 3.3 and other sections of the Declaration of Trust or the Participation Agreement defining eligibility for participation in the Trust, a business entity that is not engaged in retail sales of goods but that is commonly owned by a Participant or an applicant for participation in the Trust who meets all the qualifications for participation, may be considered for participation provided the combined payroll of the qualifying business and the other business is predominantly in general classification codes related to retail sales, corresponding to businesses having any of the SIC codes listed on Appendix A to these Bylaws. For purposes of this section, "commonly-owned" shall mean that fifty-one percent (51%) of the entities in question are owned by the same person, partnership, corporation or other legal entity.

**3.4 Application for Participation.** Any qualified business entity may apply for participation by completing and submitting to the Trust an application on a form approved by the Chair, and such other documents as the Trust or the Chair shall require. Each applicant shall furnish the Trust access to its records and facilities, as deemed necessary, to permit evaluation of the proposed Participant's eligibility for participation.

**3.5 Certificate of Participation.** Each new Participant admitted to the Trust shall receive from the Trustees a certificate of participation and coverage in form acceptable to the Chair.

**3.6 Withdrawal.** Any Participant may withdraw from the Trust only upon written notice that must be received by the Trustees ninety (90) days before the proposed date of withdrawal. A withdrawal notice shall be delivered to the Trustees or such other person designated by the Trustees for receipt of such notice. Withdrawal of a Participant without the ninety (90) days written notice required herein shall subject the withdrawing Participant to a penalty equal to the amount of contributions that would have been due from the Participant during the ninety (90) day notice period as if the Participant were still a Participant in the Trust. Any such notice of withdrawal shall not relieve the Participant from any obligation to pay contributions, assessments, or other expenses incurred, accrued or unpaid at any time before the effective date of such withdrawal.

**3.7 Termination.** Any Participant's participation in the Trust may be terminated for a participant's failure to comply with the requirements for Trust participation established by these Bylaws, the Declaration of Trust, the Participation Agreement, or the Law or Rules and Regulations of the Chair. The effective date of any such termination shall be no earlier than thirty (30) days after written notice of termination is delivered to the terminated Participant or ten (10) days after notice of such termination is delivered to the Chair, which notices may be given so that the applicable notice periods shall all expire at the end of the thirty (30) day notice period.

#### **ARTICLE IV -- MEETINGS OF PARTICIPANTS; ACTION BY PARTICIPANTS**

**4.1 Meetings.** The Participants shall meet once annually to transact any business that may come before the Participants, and to discuss those issues which are of general concern to the Participants. Special meetings of the Participants for any purpose may be called by the Chairman of the Trustees at his or her discretion.

**4.2 Notice of Meetings.** Written notice of meetings of the Trust Participants shall state the place, date, and time of the meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called. Such notice shall be delivered to each Participant not less than ten (7) nor more than thirty (30) days before the date of the meeting.

**4.3 Waiver of Notice.** Notice of any meeting of the Participants will be considered

waived by any Participant who executes a written waiver of notice, either before or after the meeting, or who attends such meeting.

**4.4 Quorum.** A quorum at a meeting of Participants for the transaction of business shall be present whenever a majority of the Participants entitled to vote are represented in person or by proxy held by the Secretary or the person acting in his or her place at the meeting, or by telephone connection in the case of telephone conference call meetings conducted in accordance with Section 4.7 of these Bylaws.

**4.5 Votes; Vote by Proxy.** Each Participant entitled to vote shall be entitled to one (1) vote upon each matter submitted for vote at a meeting of Trust Participants. A Participant who cannot attend an annual or special meeting of the Participants may cast a vote on any matter submitted to the Participants for vote by proxy. Proxy forms shall be made available to Participants upon request. Any Participant holding a proxy vote shall turn in the proxy to the Secretary prior to the meeting. The affirmative vote of a majority of all Participants entitled to vote shall be necessary to approve any action.

**4.6 Disqualification; Determination by Trustees.** No Participant may vote upon any resolution that, by its terms, relates specifically to such Participant by name and is not equally or pro rata applicable to all Participants, including but not limited to resolutions relating to participation, contributions, dividends, assessments, or distribution of excess funds. Whenever the nature of any proposed resolution submitted to the Participants disqualifies such number of Participants from voting upon such resolution as would render a quorum impossible to obtain for purposes of considering such resolution, the approval or disapproval of the resolution shall be determined by the Trustees.

**4.7 Telephone Conference Call Meetings; Action Without a Meeting.** Participants may participate in a telephone conference call meeting of the Participants by means of a conference telephone connection that provides a means by which all persons participating in the meeting can hear each other. Alternatively, any action required or permitted to be taken at a meeting of the Participants may be taken without a meeting if a consent in writing, setting forth the actions proposed, shall be signed by the number of Participants required to adopt the action at a meeting. Such action by the Participants without a meeting shall be by mail or fax ballot, as provided in Section 4.8 below.

**4.8 Special Voting Procedure by Mail or Fax Ballot Without a Meeting.** Upon the occurrence of any matter that requires a vote by the Participants in the absence of any regularly scheduled meeting of the Participants of the Trust, the Participants may vote by mail or fax ballot on the issue requiring approval by the Participants. Votes shall be cast on ballots specifically mailed or faxed to all Participants. Ballots shall clearly state the issue or issues to be decided, shall indicate a "Yes" or "No" vote by the Participant, shall state the deadline for receipt of ballots and the location where ballots are to be sent. Mail or fax ballots shall be sent out no more than 14 and no less than 7 days before votes are due in the administrative office of the Trust. Unreturned ballots and ballots returned without a vote marked shall be counted as an affirmative vote. A majority of the Participants must vote in the affirmative on any mail or fax vote for the ballot issue to be approved.

## **ARTICLE V – TRUSTEES**

**5.1 General Powers and Duties; Policies and Plan of Operation.** The Trust shall be man-

aged by its Trustees, who shall have the powers and duties set forth in the Declaration of Trust and these Bylaws. In addition to these provisions, the Trustees may adopt policy for the Trust and its Participants as they deem necessary to implement the provisions of the Declaration of Trust, the Participation Agreement and these Bylaws. Policies adopted by the Trustees shall be in accordance with the Law, the Rules and Regulations of the Chair, the requirements of any Insurer, and the recommendations of the Group Administrator, and shall be binding on all parties hereto and all persons claiming any rights in the Trust.

**5.2 Number, Election, Term of Office and Qualifications.** The Trust shall be governed by the voting Trustees designated in the Declaration of Trust, with the number of Trustees subject to change in accordance with the provisions of the Declaration of Trust providing for additional Trustees. Each Trustee shall be a representative of a Participant of the **Mercantile Self-Insurance Trust**. Each Trustee shall hold office until a successor is elected. Non-voting Trustees shall be appointed in accordance with the provisions of the Declaration of Trust.

**5.3 Meetings.** The Trustees shall meet at least annually. Regular meetings of the Trustees shall be held as frequently as the Trustees determine meetings to be necessary, at such times and places as may be designated by resolution of the Trustees, or as determined by the Chairman. The Chairman shall call a special meeting of the Trustees if requested to do so in writing by any two (2) Trustees.

**5.4 Notice of Meetings.** Written notice of any meeting of the Trustees, stating the place, date and time of the meeting and the purpose or purposes for which it is called, shall be delivered to each Trustee not less than three (3) nor more than thirty (30) days before the date of the meeting. Such notice shall be given by mail or by fax, at the direction of the Chairman.

**5.5 Waiver of Notice.** Notice of any meeting of the Trustees will be considered waived by any Trustee who executes a written waiver of notice, either before or after the meeting, or who attends such meeting.

**5.6 Quorum.** A quorum at a meeting of the Trustees and for the transaction of the business shall be a majority of the Trustees then in office.

**5.7 Votes.** The vote of a majority of the Trustees then in office and entitled to vote shall be the act of all the Trustees. A Trustee may not vote on any matter which relates to him or her or to the Participant he or she represents by name, or from which he or she alone or the Participant he or she represents would profit financially; such limitation shall not be deemed to prohibit a Trustee from voting on a matter which provides a financial benefit to a class of Participants that may include the Trustee or the Participant he or she represents. No Trustee shall be disqualified from voting upon any matter that relates to his or her interest in the Trust Assets, provided that such resolution does not relate specifically to such Trustee or to the Participant he or she represents by name, and is equally or pro rata applicable to all Participants with similar interests.

**5.8 Telephone Conference Call Meetings; Action Without a Meeting.** Trustees may participate in a telephone conference call meeting of the Trustees by means of a conference telephone connection that provides a means by which all persons participating in the meeting can hear each other. Alternatively, any action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting if a consent in writing, setting forth the actions proposed, shall be signed by the number of Trustees required to adopt the action at a meeting. Such action by the Trustees without a meeting shall be by mail or fax ballot, as provided in Section 5.9 below.

**5.9 Special Voting Procedure by Mail or Fax Ballot Without a Meeting.** Upon the occur-

rence of any matter that requires a vote by the Trustees in the absence of any regularly scheduled meeting of the Trustees, the Trustees may vote by mail or fax ballot on the issue requiring Trustee approval. Votes shall be cast on ballots specifically mailed or faxed out to all Trustees. Ballots shall clearly state the issue or issues to be decided, shall indicate a "Yes" or "No" vote by the Trustee, shall state the deadline for receipt of ballots and the location where ballots are to be sent. Unreturned ballots and ballots returned without a vote marked shall not be counted as a vote.

**5.10 Resignation.** Any Trustee or Officer may resign at any time, upon ten (10) days prior written notice to the other Trustees and the Group Administrator. Such resignation shall be made in writing and delivered to the Secretary (except that any resignation by the Secretary shall be delivered to the Chair), and shall take effect at the time specified therein or, if no time is specified, ten (10) days after its receipt by the Secretary. The acceptance of a resignation shall not be necessary to make it effective. The vacancy created by such resignation shall be filled pursuant to Section 5.12 below.

**5.11 Removal.** Any Trustee or Officer may be removed, for cause, by vote of the remaining Trustees, which removal shall take effect immediately. Any Trustee may be removed, for cause, by a vote of a majority of the Participants, which removal shall take effect upon ten (10) days prior written notice to the other Trustees. The vacancy created by such removal shall be filled pursuant to Section 5.12 below.

**5.12 Vacancies.** If the office of any Trustee becomes vacant by reason of resignation, removal, death, incapacity, disqualification, or otherwise, the vacancy shall be filled by election by the remaining Trustees, as provided in the Declaration of Trust.

**5.13 Committees.** The Trustees may appoint such committees as they determine to be necessary to assist them in the conduct of Trust business. Committees shall have and exercise such powers and responsibilities as may be delegated to them by the Trustees, but shall not exercise any powers or duties specifically delegated to the Trustees by the Declaration of Trust, the Participation Agreement or these Bylaws.

## ARTICLE VI -- OFFICERS

**6.1 Enumeration and Qualifications.** The Officers of this Trust shall be a Chairman, a Treasurer and a Secretary, and such other Officers as may from time to time be deemed necessary by the Trustees. If approved by the Trustees, the offices of Treasurer and Secretary may be combined into a single office of Secretary-Treasurer and filled by a single Trustee. All Officers shall be voting Trustees; non-voting Trustees may not serve as Officers.

**6.2 Election and Term of Office.** Officers of the Trust shall be elected by the Trustees. Each Officer shall serve until his or her successor is elected.

**6.3 Vacancies.** Any vacancy in any office caused by death, resignation, incapacity, disqualification, removal, creation of a new office, or otherwise, shall be filled by the Trustees, with such Officer to serve until the next regularly scheduled election of Officers.

**6.4 Chairman.** The Chairman shall preside at all meeting of the Participants and of the Trustees, and shall perform such other duties as are prescribed by the Trustees in these Bylaws.

**6.5 Treasurer.** The Treasurer shall have general supervision of all funds of the Trust, and shall perform such other duties as are prescribed by the Trustees in these Bylaws.

**6.6 Secretary.** The Secretary shall supervise the recordkeeping of all proceedings of the Participants and Trustees at their respective meetings, all Trustee or Participant votes taken at

meetings or outside a meeting, as permitted by these Bylaws; shall ensure that appropriate notice is given for all such meetings, shall ensure that all written consent instruments contemplated by the Declaration of Trust, the Participation Agreement and these Bylaws are properly kept, and shall perform such other duties as are prescribed by the Declaration of Trust, the Participation Agreement and these Bylaws, or at the direction of the Trustees.

## **ARTICLE VII – CONTRACTING AND OTHER AUTHORITY; GROUP ADMINISTRATOR AND CLAIMS ADMINISTRATOR**

**7.1 Group Administrator.** The Trustees shall select an agent to discharge the duties of Group Administrator, who shall provide certain services to the Trust, including but not limited to risk management, administration of audits, compliance with informational filings required by the New York Workers' Compensation Law and the Rules and Regulations of the Chair, other underwriting and insurance services required by the Trust, the provision of administrative services to the Trust, the establishment of an office for the Trust, coordinating notices to Trustees as required herein, coordinating meetings of the Trustees and the Participants, bringing to the attention of the Trustees and the Participants any business which requires their attention, and other duties contained in the agreement between the Trust and the Group Administrator. The agreement with the Group Administrator shall be a written instrument which shall delegate authority to the Group Administrator to act as agent of the Trustees for the management and operation of the Group at the direction of the Trustees, the limitations on the authority of the Group Administrator, compensation due to the Group Administrator, and the term of the agreement.

**7.2 Claims Administrator.** The Trustees shall select an agent to discharge the duties of Claims Administrator, who shall provide certain services to the Trust, including but not limited to the administration and defense of the workers' compensation claims of the Participants, and any other duties contained in the agreement between the Trust and the Claims Administrator. The agreement with the Claims Administrator shall be a written instrument which shall delegate authority to the Claims Administrator to act as agent of the Trustees for the administration of the Trust at the direction of the Trustees, the limitations on the authority of the Claims Administrator, and the term of the agreement.

**7.3 Contracting Authority.** The Group Administrator and the Claims Administrator shall have authority to approve or execute any contracts on behalf of the Trust with the approval of the Trustees. The Claims Administrator shall have the authority to settle claims brought against the Trust pursuant to the New York Workers' Compensation Law with the approval of the Trustees, as provided in the agreement between the Trust and the Claims Administrator, consistent with Trustee policy for approving such settlements.

## **ARTICLE VIII – TRUST ASSETS; INVESTMENT; EXCESS FUNDS**

**8.1 Deposit of Funds into Accounts; Payment of Obligations.** Contributions and other funds received by the Trustees which comprise the Trust Assets shall be deposited into such account or accounts and designated into funds as determined appropriate by the Trustees to ensure that sufficient Trust Assets shall be available at all times to meet the obligations of the Trust under the New York Workers' Compensation Law, and to meet other legal liabilities of the Trust.

The Trustees shall invest, use and apply the monies and assets in such accounts and funds to make those payments on behalf of Participants as required by the Law, the Rules and Regulations of the Chair, the Declaration of Trust, the Participation Agreement and these Bylaws, including the payment of those benefits provided by the Law as well as legal fees and costs in all contested cases. The Trustees are authorized to set aside such amounts from the Trust Assets as shall be reasonable to cover the operating costs and administrative expenses of the Trust; provided, however, that the amount set aside by the Trustees for administrative funds shall not prevent the payment of the Trust's obligations under the New York Workers' Compensation Law, to the extent required by the Law, the Rules and Regulations of the Chair, and sound actuarial practices.

**8.2 Trustees' Administration of Accounts and Funds.** The accounts and funds containing the Trust Assets shall be under the general supervision and administration of the Trustees, who may delegate authority and duties with respect thereto, as they deem it to be appropriate, to the Group Administrator, the Claims Administrator, or the investment advisor retained by the Trustees.

**8.3 Investment.** The Trustees may invest any amounts of the Trust Assets not required for the payment of Trust obligations under the New York Workers' Compensation Law, and not required for administrative expenses, in accordance with the Law, the Rules and Regulations of the Chair, the Declaration of Trust, the Participation Agreement and these Bylaws.

**8.4 Excess Funds.** Any Trust Assets remaining, including undistributed excess funds from previous fiscal years, after paying all such current benefits, claims and claims expenses, including provision for claims incurred but not reported; creating reserves; and providing for open claims, outstanding reserves and loss fund requirements; payment of all premiums, assessments, liabilities, operating costs and administrative expenses; shall be considered excess funds. In any fiscal year, such excess funds may be used by the Trustees for any purpose and function of the Trust, including for the protection and preservation of the Loss Fund. Such funds may be distributed to the Participants upon vote of the Trustees to do so and in accordance with the Rules and Regulations of the Chair and upon notice to and approval of the Chair, if such approval is required; and in accordance with the Declaration of Trust, the Participation Agreement and these Bylaws. Provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of each fiscal year of the Trust; and provided further that undistributed excess funds from previous fiscal years may be distributed to the Participants upon vote of the Trustees to do so and in accordance with the Rules and Regulations of the Chair and upon notice to and approval of the Chair, if such approval is required, if such amounts are not required for reserves or not designated by the Trustees for other purposes.

**8.5 Fiscal Year.** The Loss Fund and the Administrative Fund shall operate on a fiscal year of twelve (12) calendar months corresponding to the Trust fiscal year of January 1 - December 31 .

## ARTICLE IX -- AMENDMENTS

**9.1 Amendments.** These Bylaws may be amended or repealed, or new bylaws adopted, by vote of a majority of the Trustees. Any such amendment shall become effective after being filed with and approved by the Chair. Any amendment shall be sent to each Participant within ten (10) days of its approval.

## Appendix A to the Bylaws

### Standard Industrial Classification (SIC) Codes

In accordance with the qualifications for membership described in section 3.3 herein, businesses shall be deemed to be engaged in the retail sales of goods if the business is classified in or qualifies for classification in one of the following Standard Industrial Classification (SIC) Codes, subject to any additional qualifications stated herein:

In Division D (*Manufacturing*):

In Major Group 20 (*Food And Kindred Products*):

In Industry Group 205 (*Bakery Products*):

2051 *Bread And other Bakery Products ,Except Cookies And Crackers*

In Division G (*Retail Trade*):

Major Group 52 (*Building Materials, Hardware, Garden Supply, And Mobile Home Dealers*)

5211 (*Lumber And Other Building Materials Dealers*)

5311 (*Paint, Glass, And Wallpaper Stores*)

5251 (*Hardware Stores*)

5261 (*Retail Nurseries, Lawn And Garden Supply Stores*)

Major Group 53 (*General Merchandise Stores*)

5311 (*Department Stores*)

5331 (*Variety Stores*)

5399 (*Miscellaneous General Merchandise Stores*)

Major Group 54 (*Food Stores*)

5411 (*Grocery Stores*)

5421 (*Meat And Fish [seafood] Markets, Including Freezer Provisions*)

5431 (*Fruit And Vegetable Markets*)

5441 (*Candy, Nut And Confectionery Stores*)

- 5451 *(Dairy Products Stores)*
- 5461 *(Retail Bakeries)*
- 5499 *(Miscellaneous Food Stores)*

Major Group 56 *(Apparel And Accessory Stores)*

- 5611 *(Men's And Boys' Clothing And Accessory Stores)*
- 5621 *(Women's Clothing Stores)*
- 5632 *(Women's Accessory And Specialty Stores)*
- 5641 *(Children's And Infants' Wear Stores)*
- 5651 *(Family Clothing Stores)*
- 5661 *(Shoe Stores)*
- 5699 *(Miscellaneous Apparel And Accessory Stores)*

Major Group 57 *(Home Furniture, Furnishings, And Equipment Stores)*

Industry Group 571 *(Home Furniture and Furnishings Stores)*

- 5712 *(Furniture Stores)*
- 5713 *(Floor Covering Stores)*
- 5714 *(Drapery, Curtain, And Upholstery Stores)*
- 5719 *(Miscellaneous Home Furnishings Stores)*

Industry Group 572 *(Household Appliance Stores)*

- 5722 *(Household Appliance Stores)*

Industry Group 573 *(Radio, Television, Consumer Electronic, And)*

- 5731 *(Radio, Television, And Consumer Electronics Stores)*
- 5734 *(Computer And Computer Software Stores)*
- 5735 *(Record And Prerecorded Tape Stores)*
- 5736 *(Musical Instrument Stores)*

Major Group 58 (*Eating and Drinking Places*)

Industry Group 581 (*Eating And Drinking Places*)

5812 (*Eating Places*) - restricted to those restaurants with over-the-counter sale of food and/or counter service of convenience food (ready-to-eat), with no table service; further restricted to those restaurants that do not have an alcohol beverage license and do not serve alcohol beverages

Major Group 59 (*Miscellaneous Retail*)

Industry Group 591 (*Drug Stores And Proprietary Stores*)

5912 (*Drug Stores And Proprietary Stores*)

Industry Group 592 (*Liquor Stores*)

5921 (*Liquor Stores*)

Industry Group 593 (*Used Merchandise Stores*)

5932 (*Used Merchandise Stores*)

Industry Group 594 (*Miscellaneous Shopping Goods Stores*)

5941 (*Sporting Goods Stores And Bicycle Shops*)

5942 (*Book Stores*)

5943 (*Stationery Stores*)

5944 (*Jewelry Stores*)

5945 (*Hobby, Toy, And Game Shops*)

5946 (*Camera And Photographic Supply Stores*)

5947 (*Gift, Novelty, And Souvenir Shops*)

5948 (*Luggage And Leather Goods Stores*)

5949 (*Sewing, Needlework, And Piece Goods Stores*)

**Industry Group 596 (*Nonstore Retailers*)**

5961 (*Catalog And Mail-order Houses*)

5962 (*Automatic Merchandising Machine Operators*)

5963 (*Direct Selling Establishments*)

**Industry Group 599 (*Retail Stores, Not Elsewhere Classified*)**

5992 (*Florists*)

5993 (*Tobacco Stores And Stands*)

5994 (*News Dealers And Newsstands*)

5995 (*Optical Goods Stores*)

5999 (*Miscellaneous Retail Stores, Not Elsewhere Classified*)